

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

RICHARD A. BOYD, JR.

Plaintiff,

v.

Case No. 06-C-838

JAY M. LANGKAMP,

Defendant.

ORDER DISMISSING THE COMPLAINT

On August 4, 2006, proceeding pro se, the plaintiff, Richard A. Boyd, Jr. ("Boyd"), a person incarcerated pursuant to a state court judgment, filed a complaint pursuant to 42 U.S.C. § 1983. In his complaint, Boyd alleges that Jay M. Langkamp, the attorney who represented him in the criminal case resulting in his incarceration, was ineffective by failing to raise the issue of Boyd's competence to proceed. Accompanying Boyd's complaint was a motion to proceed in forma pauperis. On August 8, 2006, Magistrate Judge Aaron Goodstein ordered that Boyd pay an initial partial filing fee of \$19.90. This fee was paid on August 17, 2006.

On September 19, 2006, the plaintiff filed a letter in which he requests that the court either temporarily dismiss his complaint or hold his complaint in abeyance to permit him to first pursue remedies in state court.

Pursuant to Boyd's request, this court shall order that Boyd's complaint be dismissed without prejudice. However, this leaves the issue of the initial partial filing fee. Pursuant to Judge Goodstein's order, dated August 8, 2006, Boyd is obligated to pay the entire \$350 filing fee, of

which he has paid \$19.90. He remains obligated to pay balance of this fee even if his case is voluntarily dismissed. However, also in this order, the plaintiff is instructed that he may notify the court within 30 days of the order and request that his action be dismissed and thereby would not be required to pay the filing fee or incur a strike.

Boyd notified the court of his desire to withdraw his complaint slightly more than a week after the 30 day deadline. Although deadlines are ordinarily strictly enforced, in this case it would appear inappropriate to continue to require payment of the full filing fee when the plaintiff has recognized his mistake in filing this complaint and voluntarily seeks its dismissal before service upon the defendant.

IT IS THEREFORE ORDERED that this case is dismissed without prejudice.

IT IS FURTHER ORDERED that Boyd shall not be required to pay the balance of the filing fee.

Dated at Milwaukee, Wisconsin, this 4th day of October, 2006.

s/ Rudolph T. Randa
RUDOLPH T. RANDA
United States District Judge